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The League of Nations, Traffic in Women and the Transnationalization of Criminal Law

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Abstract

During the 1920s, the Advisory Committee on the Traffic in Women, of the League of Nations operated as a legal regime in the transnationalization of criminal law. This can be seen in its management of the first ›worldwide‹ investigation into the traffic in women which sent undercover investigators to more than a 100 countries across Europe, the Americas, and the Mediterranean. The Advisory Committee initiated ›trafficking‹ as a transnational crime and advanced the understanding of transnational criminal law beyond concepts of professional criminality.

Keywords: traffic in women, transnational crime, white slave trade, international crime, sociological jurisprudence



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Paul Knepper

The League of Nations, Traffic in Women and the Transnationalization of Criminal Law

During the 1920s, the League of Nations pursued a campaign against trafficking in women built around a ›worldwide‹ investigation. The Advisory Committee on the Traffic in Women and Children sent undercover investigators to more than a hundred cities in nearly thirty countries across Europe, the Mediterranean and the Americas. The investigators conducted 5000 covert interviews with persons knowledgeable of the sex trade at brothels, hotels, cafés and music halls, in addition to 1500 official interviews with representatives from police departments, immigration authorities, and shipping lines.¹

The League's campaign, and particularly the investigation, advanced the idea of the traffic in women as an international crime. From the perspective of crime history, international crime can be identified as an activity such as drug smuggling, assassination, counterfeiting or financial fraud that crossed a border, or threatened to, and attracted concern from multiple nation states. Police, in particular, used this language to refer to such crimes. During the 1920s, the International Criminal Police Commission (to become known as INTERPOL) alerted governments to »a new class of criminal – the international criminal« that made use of technological advances in communication and transportation to perpetrate organized forms of cross-border criminality.²

From the perspective of global legal history, however, the term ›international crime‹ is less than satisfactory because it confuses an important distinction between international criminal law and transnational criminal law. As Neil Boister explains, international criminal law refers to law directly applicable to international criminal tribunals, such as the International Criminal Court, and criminal responsibility directly applied under international law. International criminal law concerns war crimes, crimes against humanity, and genocide. Transnational criminal law forms a

broader system that aims to suppress harmful activity across national boundaries. Nation states enforce their own criminal laws, but must rely on other states if they are to enforce their laws against criminals operating across shared borders. ›Transnational criminal law‹ provides a clearer description for crimes such as drug smuggling, terrorism, etc., than ›international criminal law‹ because transnational criminal law operates indirectly by means of vocabularies, procedures, and practices that range from formal cooperation to informal coordination of police or other authorities.³

This essay will explore how the League of Nations' Advisory Committee on Traffic in Women (ACTW) operated as a legal regime in the realm of transnational criminal law. The essay has four parts. Part one introduces the League's campaign against the traffic from the perspective of entangled history. Part two explains how the organization of the investigation as envisioned by Grace Abbott fits the definition of a ›transnational law regime‹. Part three examines the wider cultural, political and social contexts in which such regimes operate with a look at the *SS Cap Polonio* case and South America. Part four examines the legal status of the League and the meaning of ›transnational criminal‹ within the controversy surrounding the alleged trafficker known as 18-R.

I. The League of Nations and the Traffic in Women

At the end of the First World War, the international campaign against the white slave trade succeeded in inserting Article 23c into the Covenant of the League of Nations, in which the League assumed responsibility for monitoring treaties concerning the white slave trade and drug smuggling agreed before the war. The first woman to address the Assembly spoke about the traffic in women.

1 LEPPANEN (2007); PLILEY (2010); LIMONCELLI (2010); CHAUMONT (2009).

2 DEFLEM (2002). See, further, KNEPPER (2011); GORMAN (2012); JÄGER (2006).

3 BOISTER/CURRIE (2015).

Henni Forchhammer, a member of the Danish legation, emphasized that the illicit trade in women's bodies could not be suppressed without multinational intervention coordinated via the League.⁴ The Assembly directed the Secretariat to survey the member states about the present status of legislation and their future plans. In 1921, the League of Nations convened an international conference on the traffic in women. Representatives from 34 nations met in Geneva to review progress on the two existing international agreements concerning the white slave trade: the International Agreement of 18 May 1904 and International Convention of 4 May 1910. The conferees agreed to a series of resolutions, which became known as the Final Act of the conference. The Final Act became a multilateral treaty, the International Convention for the Suppression of the Traffic in Women, signed by 27 countries, including several from South America.⁵

Two resolutions passed at the 1921 conference proved to be of particular significance. First, the conference inaugurated the conceptual language of *trafficking*. Resolution 13 provided that the phrase ›white slave trade‹ in international agreements should be replaced with the words ›traffic in women‹. The language provided for a new category of criminal activity that became part of the League's concern because it took place across national borders. H. Wilson Harris, who popularized the League's campaign against the traffic in women in his 1928 book *Human Merchandise*, recognized the significance of the new vocabulary. The new language had come about as a convenient reference in Article 23c which had, perhaps unintentionally, linked the sex trade and drug smuggling, ›but‹, Harris wrote, ›it is impossible to follow the course of the League's activities in either field without being impressed by the extent of the common terminology habitually applied to both evils – traffic in drugs, traffic in human bodies and souls‹.⁶ Eric Ambler captured the logic of this new threat of cross-border criminality in his 1939 novel *The Mask of Dimitrios*. Drawing on the popular conception of the League's efforts, the character of Dimitrios is not merely a principal in the white

slave trade, but also in drug smuggling, political assassination, spying and financial fraud.⁷ In other words, the concept of *trafficker* enabled the League of Nations to claim ownership over a range of cross-border activities.

Second, the 1921 conference institutionalized the international anti-traffic campaign. Resolution 11 of the Final Act created the Advisory Committee on the Traffic in Women and Children (ACTW). The Council invited France, Great Britain, Japan, Poland, Spain, Romania, Denmark, Italy and Uruguay to appoint representatives. In addition, there would be five unofficial representatives or ›assessors‹ from the voluntary agencies: the International Bureau for the Suppression of the Traffic in Women and Children, the International Women's Organization, the International Catholic Association for the Protection of Women and Girls, and the Jewish Association for the Protection of Girls and Women. Ostensibly, the ACTW was a technical organization within the League framework, and as such, an organization with limited scope and influence. However, as Susan Pedersen points out, the technical organizations claimed particular success as intergovernmental organizations. The ›institutional entrepreneurs‹ that led these technical committees built ever larger empires, so that by the 1930s, more than half the League's budget went for ›technical work‹.⁸ Rachel Crowdy, head of the League's Social Questions and Opium Traffic Section, led the ACTW. During the war, she had joined the Voluntary Aid Detachment (VAD), organized to support the British army, and became the principal commandant of VADs on the Continent. In 1919, she received the equivalent of a knighthood from King George V (Dame Commander of the Most Excellent Order of the British Empire) for her work during the war organizing medical support centres and ambulance stations. Crowdy was the only woman to lead a department within the League Secretariat. She was particularly effective at building networks of women's groups, voluntary associations and member states to advance the ›Geneva dream‹.⁹

Reading the texts of politicians, journalists, academics and other League advocates, it is easy

4 Henni Forchhammer spoke against trafficking in women and children at the League of Nations session in December 1920.

5 BOECKEL (1929).

6 HARRIS (1928) 26.

7 AMBLER (1939).

8 PEDERSEN (2007) 1092.

9 GORMAN (2012) 62.

to see the campaign against the traffic in women waged by the League of Nations as an abrupt transition in the history of crime, the moment when the League abandoned the 19th-century concept of ›white slave trade‹ and introduced the 21st-century concept of ›traffic in women‹. The League of Nations has received good marks from historians for discarding the antiquated language of *white* slavery with its racist implication that only European women mattered. This fits with the leading historiographical view of the development of international society as a progressive advance from power politics to a global community.¹⁰ In practice, however, the League's continuing concern with European women taken to brothels in South America and the Middle East remained less universalist/human rights oriented and more European/colonialist.¹¹ The League's campaign in the 1920s is more a story of continuity. On the one hand, it takes place in a much longer history of internationalism, transnationalization of criminal law, extension of concepts of criminal behaviour.¹² On the other, while the League brought significant innovation in the form of a transcontinental investigation, even this had its origins in the decades when the problem was conceptualised as the white slave trade. This is also why the concept of entangled history fits so well. The story of traffic in women is not unique to the present age, but has a longer provenance. Each generation sees coerced prostitution through a lens of anxiety about the immediate future, and the impact of broader social, cultural, economic, and technological changes in society. Entangled histories do not offer a single point of departure, but complex intertwined networks without a clear beginning or end.¹³

The idea for an investigation into the traffic in women did not emerge from discussions in Paris in 1919 when the League of Nations added the ›white slave trade‹ to the Covenant but from legal proceedings in New York City a decade before.¹⁴ In 1909, *McClure's*, a popular magazine with a national circulation, printed an exposé of the white slave trade that portrayed New York City as the capital of the international underworld. Under the protection of corrupt politicians, white slavers supposedly procured girls from East Side tenements and villages of Eastern Europe for brothels throughout the United States, West Indies and South America. The white slave trade became the leading issue in municipal elections that year, and a grand jury was called to determine the truth of the reports. To lead the grand jury, the judge appointed billionaire John D. Rockefeller Jr.¹⁵

Rockefeller pursued his task with missionary zeal. He secured \$25,000 from the mayor's office for an undercover investigation in which operatives attempted to buy women. Among the operatives were three women who posed as decoys, a private investigator, and investigators from the district attorney's office. Although the grand jury concluded that a clandestine trade in women's bodies did exist, they turned up ›no evidence‹ of ›incorporated syndicates‹ or ›international bands‹ of criminals.¹⁶ Rockefeller planned to urge the mayor to set up a permanent commission, staffed with an investigator, to carry on the work of the grand jury. But then he had another idea. The publicity surrounding the investigation and the political wrangling over the findings convinced him of the need for a new strategy. Rockefeller registered a corporation known as the Bureau of Social Hygiene, which initially operated out of rooms in the Stand-

10 WERTHEIM (2012) 211. As Wertheim explains, the teleological view of history, banished from national histories, has found a home in international history. See, for example, IKENBERRY (2001); IRIYE (2002); KENNEDY (2006).

11 KNEPPER (2009).

12 See, for example, MAZOWER (2012).

13 DUVE (2014) 7–8.

14 The 1899 convention passed at that year's International Congress on the White Slave Trade in London resulted in the 1904 international convention on administrative measures and special police activities/branches that

should investigate the crime. Also in 1904, the *Nationale Zentralstelle Mädchenhandel* was established in Germany, and in 1905 the Reichstag passed the corresponding Abkommen zwischen dem Deutschen Reiche und anderen Staaten über Verwaltungsmaßnahmen zur Gewährung wirksamen Schutzes gegen den Mädchenhandel, 18. Mai 1904, Deutsches Reichsgesetzblatt 1905, vol. 33, 695–705.

15 KNEPPER (2012).

16 Presentment in the Matter of the Investigation as to the Alleged Existence in the County of New York of

an Organized Traffic in Women for Immoral Purposes, 2 January 1910, Rockefeller Archives, RG 2, Series 0, Box 8, Folder 56.

ard Oil Building at 26 Broadway, New York City. During the next two decades, the Bureau would pour more than \$5 million into the moral war against the »social evil« of prostitution.¹⁷

One of the organizations funded by Rockefeller's Bureau, the American Social Hygiene Association (ASHA), would figure prominently in the League's worldwide investigation. The ASHA, formed in 1914 from an amalgamation of several organizations set up to promote public morality, was one of a number of private organizations that conducted secret investigations into vice districts of cities across the United States. These organizations relied on undercover investigators to break down the collusion between corrupt officials and criminal elements believed to support wide scale prostitution. The investigators prepared reports that were presented to city officials on the understanding that this information would be handed over to the press if officials failed to act.¹⁸ The investigations blurred the distinction between public and private, legal and social inquiry. The organizations' leaders displayed an enthusiasm for covert investigation with little regard for legal rights; they believed they were justified in doing so by the need to address pressing social problems.¹⁹

II. Abbott's Proposal for a Worldwide Investigation

At the 1923 meeting of the ACTW, the American representative, Grace Abbott, proposed a comprehensive study. From the 19th century onwards, stories had circulated about girls trapped into prostitution; girls drugged with chocolates, spirited away in motor cars, or lured with offers of careers on stage. So many incidents were reported to have occurred in a few years it strained credulity. The reports always appeared second-hand; there was never a victim's account sworn before the police or a magistrate. The emotional appeal of

the »white slave« narrative was meant to convince readers about the urgency of the problem; there was no need to ask for proof.²⁰ Abbott insisted that the League's effort would not have credibility without a systematic inquiry to »establish the facts« of the traffic: the extent of the traffic in women for prostitution; the methods and routes used by traffickers; and the effectiveness of national controls. Skilled investigators would need to visit cities regarded as key sites. It would be difficult and dangerous work, but essential to provide an »intelligent basis« for international cooperation.²¹

Abbott's proposal is interesting on several levels. The United States did not join the League of Nations. President Wilson's opponents in the US Senate defeated his international agenda, and the US Congress refused to ratify the agreement, so Abbott's proposal did not represent that of a member state. At the initial meeting of the ACTW, the members decided to invite the United States (and Germany) to send representatives to serve in an informal capacity. The Harding Administration sent Abbott, director of the child-labour division of the US Children's Bureau in Washington, DC. Abbott had been a resident of Hull House in Chicago, the pioneering immigrant settlement organization. She completed a doctorate in political science at the University of Chicago, and in 1910 joined the faculty of its School of Civics and Philanthropy. Further, Abbott's proposal did not represent the initiative of the Harding Administration, but rather that of a private individual, Rockefeller. The British representative welcomed the proposal. The French countered with a bid for each country to carry out an enquiry within its own borders, but Abbott insisted this would fail to produce »official and accurate« data about cross-border activity. When Abbott promised that she could find the money to fund the investigation, she won the argument. She brokered a grant of \$75,000 from Rockefeller's Bureau of Social Hygiene in New York City.²²

17 The Origin, Work and Plans of the Bureau of Social Hygiene, 27 January 1913, Rockefeller Archives, Series 1, Box 2, Folder 25; Helen Spencer to Edward Robinson, 26 November 1949, Rockefeller Archives, RG 2, Series 0, Box 9, Folder 72.

18 *First Annual Report 1913–1914*, New York: American Social Hygiene Association, 1914, Social Welfare

History Archives, Elmer Andersen Library, University of Minnesota (Box 170).

19 FRONC (2009); ROBERTSON (2009); KNEPPER (2012).

20 BILLINGTON-GREIG (June 1913).

21 ACTW (1923a) 27; Grace Abbott, Recommendations submitted as a possible subject for discussion by the Committee on Traffic in Women and

Children, Edith and Grace Abbott Papers, Regenstein Library, University of Chicago (Box 61).

22 ACTW (1923b) 3–4.

The relationship between Rockefeller, Abbott and the ACTW can be understood within what Karl Härter defines as a »transnational law regime«. The ACTW brought together government and non-state actors, experts and practitioners, extending to transnational as well as national levels, characterized by varying legal and administrative procedures.²³ Or, as Boister puts it, transnational criminal law includes all forms of criminal law with an international dimension. It is distinguished by its indirect nature, which contrasts with the direct nature of international law, but forms a »distinct system«.²⁴ In examining the work of the ACTW, we also see the role of private initiatives in a transnational law regime. Daniel Gorman refers to Rockefeller's contribution as »private internationalism«, a significant aspect of the American contribution to international society.²⁵

The Council of the League of Nations agreed to Abbott's proposal and appointed a Special Body of Experts to carry out the investigation.²⁶ To lead the Special Body of Experts, Abbott secured William F. Snow, a trained physician who was professor of preventive medicine at Stanford University. He also led the ASHA, which, Abbott realized, was less than ideal from the standpoint of conducting objective fact-finding.²⁷ To lead the field investigation, Snow chose Bascom Johnson, the ASHA's legal director. Johnson had completed his law degree at the University of Pennsylvania and practiced law in Philadelphia before becoming legal counsel at the ASHA. During the First World War, both Johnson and Snow had served with the US Commission on Training Camp Activities. Major Johnson and Colonel Snow had together campaigned to close down red light districts adjacent to military camps across the western United States.²⁸

Johnson planned the field investigation along the lines established by the ASHA for its work in cities. The ASHA's method might be described as an »undercover policing model«. As Jean-Michel Chaumont, Magaly Rodríguez García and Paul Servais point out, Johnson referred to police methods to justify this strategy in addressing the Special Body of Experts.²⁹ But the fact that these investigations targeted corruption by police and other authorities meant that they necessarily relied on private investigators, and thus legal requirements concerning procedure, evidence, and prosecution that would extend to the police did not apply. What Johnson did not tell the Special Body of Experts is that the ASHA had been criticized for their undercover methods. The District Attorney's office in New York City had accused ASHA investigators of entrapment; the *New York Evening Graphic* newspaper had said they engaged in »sneaky, slimy spy work«.³⁰

Abbott's proposal projected an understanding of the law known as »sociological jurisprudence«, or more precisely, the American version of it. During the 1920s, Harvard law professor Roscoe Pound challenged the philosophical basis of international law. He argued that international law did not represent a separate form of law and that international lawyers made so little progress because they had conceived of international law as a »closed metaphysical system«. Proponents of international law adopted rules, then imagined social realities would conform to them. According to Pound, the failure of international law, which had become apparent with the First World War, was due to its reliance on an outworn philosophy that refused to adapt the developing techniques of the social sciences for understanding social realities. American sociological jurisprudence originally targeted

23 HÄRTER (2019) 3.

24 BOISTER (2003) 956–958.

25 GORMAN (2012) 180–187.

26 The experts making up the Special Body were: Alfred de Meuron, head of the International Bureau for the Suppression of the White Slave Traffic; Princess Cristina Guistiniani Bandini, social worker and leader of the Catholic women's movement; Isidore Maus, head of the child welfare division of the Belgian government; Joseph Louis Hennequin, director of the French anti-traffic soci-

ety; Yotaro Sugimura, from the Japanese Ministry of Foreign Affairs; Paulina Luisi, physician and professor at the University of Montevideo; and Sidney Harris, a specialist in child welfare at Britain's Home Office.

27 Grace Abbott to Raymond Fosdick, 8 January 1924, Edith and Grace Abbott Papers, Regenstein Library, University of Chicago (Box 61). Professor Abraham Flexner, who had carried out research on prostitution in Europe, had been the first choice but declined due to illness.

28 SANDOS (1980).

29 See CHAUMONT / RODRÍGUEZ GARCÍA / SERVAIS (2017b) 10.

30 KNEPPER (2012) 790–791. See, further, PIVAR (2002); FRONC (2009); ROBERTSON (2009).

municipal law; Pound insisted that like municipal law, international law remained mechanical and formalistic.³¹ He encouraged international lawyers to borrow methods of the social sciences and to pursue active social engineering. The way forward for international law would be found in »new philosophies of action« and pursuit of »social control«.³²

To say that Abbott intended her proposal as an application of sociological jurisprudence would be a step too far. She never said this was what she was doing. But her approach followed from Pound's theory, and she had a close working relationship with him. Pound graduated from the University of Nebraska, studied law at Harvard University, and returned to Lincoln, where he practiced law and taught at the university. He went on to professorships in law at the University of Nebraska, Northwestern University, and the University of Chicago, before settling at Harvard, where he served as dean of the law school for twenty years. Like Pound, Abbott was originally from Nebraska. Before her move to Chicago, she received her undergraduate degree at the University of Nebraska and completed a graduate course taught by Pound. She corresponded with him throughout her career, sought his advice on child labour legislation, and was part of his network of »progressive-pragmatists«.³³ She made her proposal to the ACTW in Geneva in 1923, about a year after Pound's lecture at the University of Leiden in which he advocated sociological jurisprudence as a foundation for international law.³⁴

III. The *SS Cap Polonio* episode

About the time the investigation into the traffic in women got underway, a story appeared in various newspapers about a trafficking operation on an industrial scale. The *New York Evening Post* reported the discovery of a plot to ship 500 girls to the United States via Antwerp, Hamburg, and Rotterdam. According to the newspaper, the police

in Antwerp had »definite proof« that Hans Braun (or Mr Brown), who led the Girls' Protection Society in Berlin, was actually operating a white slave traffic ring. The authorities discovered his false identity, but he escaped from Germany before the police could make an arrest.³⁵ When Rachel Crowdy heard the story, she wrote to Grace Abbott in Washington, DC, and to Annie Baker at the International Bureau in London. Abbot had no further information, but Baker had information from the German National Society for the Suppression of the Traffic in Women and Children. Dr Jung, president of the society, reported that Braun had in September 1923 sent five girls from Romania to South America. A young woman named Anna Gertler had told him the women had sailed on the steamship *SS Cap Polonio*.³⁶

The ACTW's work on the *Cap Polonio* case illustrates political, cultural, and other social aspects of transnational law. International criminal law implies a community of nation states guided by shared values and committed to cooperation. Transnational criminal law implies sovereign states committed to selective cooperation depending on perceived self-interest. The degree of cooperation varies from crime to crime, depending on the level of harm, or perceived threat of harm. Transnational criminal law encourages us to think about the construction of transnational threats and the appropriateness of transnational responses, that is, the political, social and cultural contexts from which transnational law regimes form and operate.³⁷

When Crowdy heard the story, she immediately contacted the South American Bureau within the League's Secretariat to see if the destination of the *SS Cap Polonio* could be determined. She learned that the *Cap Polonio* had indeed left Hamburg for Buenos Aires on 30 September, and that eight days had elapsed between Gertler calling on Jung and the *Cap Polonio*'s departure. Had the information from Jung reached the Secretariat in a timely manner, Crowdy explained to the Secretary General, Eric Drummond, »steps could have been

31 ASTORINO (1995–96); GEIS (1963–64).

32 POUND (1923).

33 COSTIN (1983) 19.

34 In his 1908 critique of the philosophical approach to the study of law, Pound said that American legislation

often failed because it had »not been the product of preliminary study for the conditions to which it was to apply«. POUND (1908) 613.

35 *New York Evening Post*, 1 November 1923.

36 ACTW (1924) 24.

37 BOISTER (2015) 10–11.

taken which might have led to the liberation of the girls and the arrest of those responsible». Crowdy emphasized that none of the South American countries had sent their annual reports on the prosecution of trafficking cases for 1922 (as had been agreed in 1921). »Unless member states submitted these reports, it was impossible to take prompt action when information of supposed or actual traffic reaches the Secretariat.« She said she would bring this issue to the ACTW.³⁸

Britain's representative on the ACTW, Sidney Harris, agreed it was important to act on such information. Rumours circulated in the press, and the best response was to investigate them. In the future, he proposed, the national organizations should not only share information with each other, but work with the voluntary agencies and the police to substantiate rumours before reporting them to the ACTW.³⁹ Samuel Cohen of the Jewish Association for the Protection of Girls and Women disagreed. The Jewish Association had investigated the Braun report because Anna Gertler was Jewish. Cohen discovered that in her case, and that of the other girls, there had never been any suspicion of trafficking. From his inquiries at steamship companies in Antwerp, Hamburg and Rotterdam, he learned »how impossible the case was«. He found no record that Gertler had sailed as Jung had claimed. Although three women from Czernowitz had left for South America several months later, all had been of legal age, had worked as prostitutes, and intended to emigrate. The story of 500 girls was an exaggeration he traced to a statement Jung had made at a London conference in 1923. Cohen said the Jewish Association investigated all the reports because of the great harm to the voluntary associations brought by »wild rumours«.⁴⁰

The *SS Cap Polonio* case received significant attention from the Special Body of Experts. When they met in April 1924 for the first time, they discussed a memorandum the Secretariat had re-

ceived concerning trafficking cases that included the *New York Evening Post* report of a »vast white slave enterprise« exporting hundreds of girls from Eastern Europe for prostitution.⁴¹ Given the publicity the story had received, Dr Snow felt they could not dismiss it. Either it should be included in their investigation to the League as evidence of the traffic in women, or dismissed as a rumour circulated in the press. He directed Bascom Johnson to make a special investigation.⁴² Johnson sent his German-speaking investigator, Samuel Auerbach, to talk with Dr Jung. Jung confirmed that Anna Gertler had visited his office in September 1923. She said that shortly after losing her job as a clerk in Czernowitz, she met Hans Braun. He suggested she could find work in South America and told her that his organization, the Bureau of Aid to Emigration, would pay advance passage for her and several friends. She lost contact with Braun and missed her opportunity, but knew of five girls from Czernowitz who had left with him. Jung suspected Braun was a trafficker, notified the police, and when they caught up with Gertler, found that she was carrying a fake passport. Jung learned from sources in Hamburg that her five friends had sailed. Auerbach pressed Jung for details: the names of the five girls, Gertler's address in Czernowitz and present whereabouts, but Jung did not have this information.⁴³

In April 1924, Auerbach met with the Aid Society of German Jews in Berlin. He located a report about Gertler from 1 Oct 1923 in which she gave a similar account, but added that her friends had not travelled with Braun, but one of his associates. She could not remember the man's name. The file contained a letter from the Aid Society's Hamburg branch stating there was no truth to the report of 500 sex slaves shipped from Germany. The branch had examined the passenger list of 13 September 1923 and found no evidence of trafficking, although there were five women from

38 Rachel Crowdy, Memorandum by the Secretary on the Case of the Alleged Traffic Reported in the *New York Evening Post* 1 November 1923, 4 February 1924, League of Nations Archives, United Nations Library, Geneva, Box S181.

39 ACTW (1923b) 24.

40 ACTW (1923b) 24.

41 CHAUMONT/RODRÍGUEZ GARCÍA/SERVAIS (2017a).

42 Special Body of Experts on the Traffic in Women and Children: Sixth Session, Verbatim Report of the Fifth Meeting, February 9, 1927, 2. League of Nations Archives, United Nations Library, Geneva, Box S169.

43 Samuel Auerbach, In re *Cap Polonio* Case, 28 April 1924. League of Nations Archives, United Nations Library, Geneva, Box S181.

Romania who travelled on the *SS Cap Polonio*.⁴⁴ In September 1924, another of Johnson's investigators, Paul Kinsie, found Anna Gertler in Antwerp. She was working as a governess. She re-told her version of events, but again changed some aspects. This time she said Braun had promised to take her and her sister to New York. She wished she had left with her friends. Her employers said their house had been »in turmoil« since her arrival. She had been caught lying, stealing, and spent her time reading »trashy« stories. Kinsie decided that Anna was »demented«. »My opinion of Anna's story«, Kinsie concluded, »is that the girl never met a man named Braun.« She admitted she did not know the man's name until she heard it from the police. Kinsie surmised that several friends had told her of a mythological organization who paid advance fare for overseas travel and that she invented the rest.⁴⁵

Gertler, Johnson reported to Snow, was not a victim of the traffic. She had never heard of the *SS Cap Polonio*, had never met a man named Braun nor the other girls as Jung had claimed. Johnson learned of two similar cases: reports of a Dutch trafficker named van Gulpen and another named Swan. It was possible that van Gulpen and Swan were the same man, but this could not be established. Johnson concluded that the Braun case as reported in the New York papers was an amalgamation of three different reports. Journalists had tied together unrelated information from the reports of police and protection societies into a narrative of an international criminal who became the illusive Mr. Braun.⁴⁶

The Cap Polonio case proved to be such a vexing issue because it was just the sort of exaggerated story circulating in the newspapers the ACTW wanted to distance itself from. Yet, it was framed within a larger narrative, the so-called »Road to Buenos Aires«, that guided Abbott, Crowdy, Snow and Johnson in their investigation.

Johnson had initiated the fieldwork for the worldwide investigation by following the alleged route of white slavers from ports in Europe to the brothels of South America. In May 1924, Johnson

and Auerbach, along with their most experienced undercover investigator, Paul Kinsie, sailed from France to Argentina. They visited Buenos Aires, Montevideo, and Rio de Janeiro. While Johnson and Auerbach interviewed public officials, Kinsie explored the cabarets, late-night cafés, theatres and brothels. From these interviews, Johnson and associates »worked backwards«. They identified the »source« countries from the nationalities of foreign women working in the brothels of the leading »destination« country. In writing their official publications, Snow and Johnson described two major routes of the white slave trade. The first led from Eastern Europe to South America; specifically, from Poland, Romania, France, and Germany to Argentina. The second route operated through Eastern Europe to North Africa, through Tunis and Alexandria to Cairo.

This is what white slave trade campaigners from English-speaking countries already believed to be the case. As early as 1920, three years before the investigation began, the ASHA had alerted the public to the situation in South America. The *Social Hygiene Bulletin*, a newsletter distributed to the Association's supporters and well-wishers, described Buenos Aires as the »Paris of America«, the most »wide open« city in the Americas.⁴⁷ In a 1923 letter, Annie Baker of the International Bureau for the Suppression of the International Traffic in Women in London wrote to Johnson that, given legislation in the United States and Canada prohibiting prostitution, it could be »fully assumed« these countries would not attract traffickers. »As in former days«, she wrote, »their eyes will doubtless be directed to South American ports even more than to Egypt.«⁴⁸

Not surprisingly, the *Report of the Special Body of Experts into the Traffic in Women*, released in February 1927, met with criticism, and critics challenged the conclusions about South America in particular. »The chief complaints made against the American chairman, William F. Snow«, the *New York Times* summed up for its readers, »are, in effect, that the expert investigators were handpicked by himself

44 Auerbach, In Re Cap Polonio Case, Box S181 (n. 43) 5.

45 Paul Kinsie, S.S. Cap Polonio Case: In Re Anna Gertler, 25–26 September 1924.

46 Special Body of Experts, Report of the Fifth Meeting (n. 42) 5.

47 Buenos Aires Clamps Lid on Commercial Vice, in: *Social Hygiene Bulletin* 8 (1920) 3, copy in the Social Welfare Collection, Elmer Andersen Library, University of Minnesota.

48 JOHNSON (1923) 204.

and have given a rough white-washing to the Anglo-Saxon nations while the Latin nations come in for bitter criticism.«⁴⁹ Paulina Luisi, the representative from Uruguay on the ACTW and the Special Body of Experts, emerged as the most severe critic. A professor at the University of Montevideo, Luisi led a successful campaign to urge the Uruguayan government to accept the 1921 League Convention on the traffic in women. In the months before publication of the *Report*, she made clear her opposition. She boycotted the fourth, fifth and sixth sessions of the Special Body of Experts, and at the seventh meeting, fired a volley of criticism about the text. She declined to sign the final product and went so far as to propose that it appear only with her statement that it was unsatisfactory from the point of view of South America. In a letter to Secretary General Eric Drummond, Luisi charged that the research in South America was »very insufficient and somewhat superficial«. Field researchers had limited their investigations to cities with comfortable hotels.⁵⁰

IV. The Case of 18-R

On 4 December 1927, the *New York World* announced that it would present an »uncensored« version of the *Report of the Special Body of Experts on the Traffic in Women* acquired by its Geneva Correspondent, which included portions of the report that, the paper alleged, governments had hoped to suppress.⁵¹ The fourth article in this series ignited a political controversy that challenged the legal standing of the League, but also anticipated a modern understanding of the »transnational criminal.«⁵²

In discussing trafficking within the United States, the *World* quoted the unrevised version of the report as saying girls were found to have left

New Orleans and cities in Florida for cabarets in Mexico and Cuba. An agent working with a New York theatrical agency, referred to in the report as 18-R, boasted to the League's investigator that he had sent many girls to Panama. »If you'd been here five minutes ago you'd have seen the swellest flock of blonds you ever laid eyes on. In the next room is the guy who's taking them to Panama tomorrow.« The report charted the route through which women from Europe came into Panama, through a launch from Bocas del Toro to a tiny strip of beach beyond the jurisdiction of the United States.⁵³

The reference to 18-R in the published version of the *Report* was even more dramatic. It says the manager of a cabaret in Panama told the League's investigator that 18-R, a theatrical employment agent in New York, had furnished him with all the American girls in his establishment. The cabaret encouraged the artistes to drink with the customers and accompany them to hotels after hours. The League's investigator subsequently interviewed the agent in New York City and, posing as an entrepreneur considering Panama, asked him about acquiring girls for his music hall. The report says that 18-R claimed he had »sent over 300 girls down there«.⁵⁴

The references to 18-R in the news embroiled the Secretary General, Eric Drummond, in a controversy that tested the legal authority of the League of Nations. As Stephen Legg explains, its technical committees, such as the ACTW, took particular concern with ordinary problems in the lives of individuals in addition to the efforts to address social, economic and health problems affecting national populations.⁵⁵ Rachel Crowdy certainly believed in the authority of the League of Nations to intervene in individual cases of trafficking in women; she wanted the ACTW to decide when and how to involve local police. Not surprisingly, a number of member states disagreed. The French government, for example, insisted the

49 Commission Revises White Slave Report, *New York Times* 27 November 1927, 27.

50 William F Snow to Eric Drummond, 5 December 1927. League of Nations Archives, United Nations Library Geneva, Box S181.

51 Originally, Snow and Johnson intended to keep some information confidential, to be seen only by representatives of member states. But the

Council decided in June 1927 that all material in what became part 2 of the Report should be made public and that governments would have until September of that year to review it. The *New York World* claimed to print what the League Secretariat had tried to suppress at the insistence of angry governments: The World to Print Facts League Vice Inquiry Found, *New York World*, 4 December 1927, 1.

52 U.S. Fares Well in Exposure of White Slavery, *New York World*, 8 December 1927, 6.

53 U.S. Fares Well (n. 52).

54 *Report of the Special Body of Experts on the Traffic in Women and Children*, part 2, Geneva: League of Nations, 1927, 165.

55 LEGG (2012).

League of Nations investigators had no legal standing vis-à-vis national governments. Traffic in women, like prostitution, was a matter for domestic regulation. This issue represents a dilemma typical for transnational criminal law regimes; they organize around international agreements, but enforcement is left to national governments, as specified in the international agreements of 1904 and 1910. But as Johnson, Snow, Crowdy and Drummond were about to discover, it was not the French but their own government that would challenge the ability of the ACTW to function as a legal regime.⁵⁶

In response to statements in the *World* about the scale of 18-R's activities, Charles Tuttle, the US Attorney for the Southern District of New York, announced his own inquiry. He had been recently appointed to his position as federal prosecutor by President Coolidge and created an image of himself as a man who had left a highly successful legal practice with a Wall Street firm to become a humble servant of the people dedicated to ferreting out corruption.⁵⁷ He appointed Assistant US Attorney Henry Gerson to investigate the claims made by the mysterious theatrical agent. Gerson began by asking Johnson for the identity of 18-R, and Johnson refused. Johnson believed that Tuttle was trying to take advantage of the fact that he and Snow were American citizens and their office (the ASHA) happened to be located within New York City.⁵⁸

Tuttle demanded a copy of the *full* report, that is, with the names of cities, establishments, and actual persons rather than code words. Johnson protested that the information had been protected with codes because it remained confidential. The names of cities, establishments and persons could only be obtained from the League Secretariat in Geneva. He had been acting in an official capacity for the League of Nations and requests for information could only be approved by the League Secretariat. Further, he did not turn over the report to Gerson because he believed it would not be

useful. The report did not contain information sufficient for prosecution, and 18-R's theatrical agency no longer operated in New York City. From Tuttle's point of view, this made no difference. If crimes had been committed in New York City and they were punishable within the statute of limitations, he would issue subpoenas and make arrests. If the investigation required statements from persons in Panama, he would bring them to New York City to make such statements.⁵⁹

In January 1928, Drummond received a letter from William R. Castle, Assistant Secretary of State in Washington, DC, that requested, on behalf of Tuttle, the name of the theatrical agent referred to in Part 2 of the report as 18-R. There was »considerable pressure« on the US government to indict this man, Castle explained, and if the League did not furnish the name, Tuttle was determined to subpoena Snow and Johnson to appear before a New York grand jury.⁶⁰

Tuttle's grand jury threat pressed the question about what authority the League actually had to conduct its investigation. In a letter to Snow, Drummond made its position clear. The material collected for the League's investigation into the traffic in women stood on »very special footing« because it could only be obtained through facilities of the League of Nations and only with the permission of states in which the investigations had been made. Releasing this information would »create justifiable complaints« from governments who permitted the investigators to work in their territory and make further inquiries much more difficult. »It would not be right for an investigator to make public information received as an international official and regarded as confidential [...]«, Drummond wrote. »Mr Johnson, we think, is not entitled, and ought not be forced, to disclose in any kind of public proceedings information not contained in the published report.«⁶¹ Rachel Crowdy wrote to Drummond to express a different view. The demand for information raised »a question not only of principle but possibly of politics«. She did

56 As Boister points out, transnational criminal law must be produced by »an authentic political process in order to justify the use of state and interstate authority against individuals«. BOISTER (2003) 957.

57 TUTTLE (2002).

58 Tuttle Starts Inquiry, *New York Herald Tribune*, 29 December 1927, 8.

59 White Slave Inquiry Here Blocked by League Agent, *New York Herald Tribune* 30 December 1927, 14; White Slave Inquiry Here, *New York Times*, 29 December 1927, 40.

60 William R. Castle to Eric Drummond, 9 February 1928, League of Nations Archives, United Nations Library, Geneva, Box R3024.

61 Eric Drummond to William Snow, 9 February 1928, League of Nations Archives, United Nations Library, Geneva, Box R3024.

not see how the League of Nations could deny someone from the United States government access to »source material« at the League's office in Geneva if they wished. She did not think Johnson should testify before a New York grand jury, as it would involve revealing information which had been kept secret from League member states to a government that was not a member of the League of Nations.⁶²

Drummond accepted the wisdom of Crowdy's position. To avoid being drawn into public legal proceedings, he agreed to give Tuttle what he wanted: the identity of the notorious white slave trafficker known as 18-R. He had no objection to Tuttle learning that 18-R was Harry Walker, but asked that this be regarded as what the English police referred to as *information received*, avoiding public disclosure about the source of the information. Drummond agreed to allow someone from the American consulate in Geneva to inspect material at the Secretariat and make notes for use by the US Secretary of State on the condition it would not become evidence in any public legal proceeding.⁶³

In March 1928, Tuttle released his own report on the alleged traffic from New York City to Panama. The claims made in the *Report of the Special Body of Experts on the Traffic in Women and Children* about traffic in women from New York City to Panama, the report concluded, had »no foundation in fact«. The findings in the report amounted to »uncorroborated statements of an investigator [...] that in August 1924 [...] he had from certain persons, some of whom could not be identified, certain verbal admissions, which inevitably, such persons would deny, and, so far as we have been able to reach them, have denied«. ⁶⁴ Tuttle's investigation may have been designed more for political gain than to secure a prosecution, but it raised an important question about

what sort of facts the League's investigation was meant to uncover: evidence that could be used in criminal proceedings within a particular jurisdiction, or sociological facts about a form of criminality but without specific illegal acts?⁶⁵

In an effort to preserve the credibility of the League's campaign against the traffic, Johnson engaged Tuttle's concerns about the prosecution of Harry Walker. He drafted a statement he hoped Tuttle would give to the press. Johnson suggested that Tuttle should say the League's investigation »was not designed to secure legal evidence« that would be »sufficient to insure successful prosecution of criminals«. Rather, it was meant to »determine between what countries and in what manner women were transported for purposes of prostitution«. Tuttle was to say he had learned of Walker's activities too late to bring a successful prosecution in federal court, but that the evidence gathered by the League's investigators in the report was of sufficient quality to enable prosecution if he had decided to pursue this. Johnson preferred that Tuttle respond to press inquiries by saying: »These admissions, if it were possible to have them reported before a jury by persons alleged to have made them, would in my judgment, be sufficient to convict under our criminal laws.«⁶⁶

The League's investigators had, in fact, discarded the »legalistic definition« of traffic and formed their own working definition. As Johnson explained, the legal definition was too narrow in that it limited traffic to cases of women under twenty-two years of age or, if over that age, those procured by force or fraud.⁶⁷ For their inquiry, they regarded »international traffic« as »direct or indirect procurement and transportation for gain to a foreign country of women or girls for the sexual gratification of one or more other persons«. It included employment agents obtaining women as entertainers and artistes and profiting from their

62 Rachel Crowdy to Eric Drummond, 10 February 1928, League of Nations Archives, United Nations Library, Geneva, Box R3024.

63 Eric Drummond to Gilson Blake, 11 February 1928, League of Nations Archives, United Nations Library, Geneva, Box R3024.

64 White Slave Data Refuted by Tuttle, *New York Times* 9 March 1928, 26.

65 This contradiction can be seen in other issues of concern to transna-

tional criminal law regimes, such as anarchism, in which the goal is not to commit to enforcement but to acquire information informally from other states. KNEPPER (2011) 163.

66 Bascom Johnson to Eric Drummond, in: Draft of points to be considered by US Attorney Charles H Tuttle for inclusion in any statement he may feel necessary to give to newspapers concerning the League of Nations report on traffic in women and

children, 2 March 1928, League of Nations Archives, United Nations Library, Geneva, Box R3024.

67 JOHNSON (1928) 68.

prostitution.⁶⁸ This was an important insight because it meant they could explain international trafficking without relying on professional criminality. Crowdy made it clear in 1927 that the investigators had explored the possibility of »what one might call a ring with a super-trafficker sitting at the head making profits out of a big organisation« and »found nothing of the kind«.⁶⁹

The League's investigation had shown how *trafficking* could take place without *traffickers*. In the portion of the devoted to the United States, Johnson used the Walker case as an example. A young woman argued with her roommate, lost access to her apartment, and decided she wanted to get away from New York City. She met a theatrical agent who offered her a new life as a jazz singer at a cabaret in Panama and told her she could make extra money by having sex with Navy officers. Having arrived in Panama, it was not what she expected, and she wanted to return home. But she could not afford the return fare until completing her contract. The proprietor of the cabaret did not allow the women to use rooms at his club, but encouraged them to drink with customers. The proprietor had an understanding with the theatrical agent about sending girls willing to drink with customers and spend the night with them afterwards. The agent made money by sending girls willing to engage in casual sex, and the proprietor made money from the additional customers attracted by the presence sexually available females. The young woman turned to prostitution and eventually agreed to a second contract. As Snow and Johnson explained, most of the cabarets overseas amounted to little more than houses of prostitution, and the recruiting of American girls for them under the guise of entertainers and artistes »is international traffic«.⁷⁰

The controversy surrounding the identity of 18-R diminished the ACTW's authority in the arena of transnational criminal law, but also diverted attention from innovative work on the definition of transnational crime. Tuttle wanted to find a way to stop transnational criminals

involved in the sex trade but the League's investigation had a different problem in mind: how to address an inter-continental system of prostitution that moved women on a wide scale without any bureaucratic structure. Johnson's field investigators were not looking for rings or ringleaders to prosecute, or seeking to bring individuals to justice, but rather, trying to destroy a wide-scale system of exploitation. The report of the Special Body of Experts argued that trafficking would be abolished not by making arrests in individual cases but by extending regulation over the sex trade. The system of toleration, or licensed houses in certain cities, created a demand for »fresh attractions«. Trafficking in women represented the supply. Essentially, the laws to abolish prostitution in the United States should be extended to other countries. Closing down licensed houses in Buenos Aires, Cairo, and Paris would undermine the demand, the market for women would diminish, and the sinister business of trafficking in women would slide into a terminal recession.⁷¹

V. Conclusions

In 1933, the International Criminal Police Commission (ICPC) attempted to define »international criminal« and »international crime«. Their discussion began with a definition formulated in 1905 by the International Penal Law Union which essentially said that any crime could be considered international if any element of it (planned, facilitated, or carried out) had an effect in more than one country. The discussion focused, however, on the hunt for »professional criminals«. Dr Antonio Pizzuto of the Italian Federal Police insisted that international crime could not be distinguished from the international criminal. It was necessary to »control and register the criminals of an international kind«; the international kind of criminal differed from ordinary criminals through habitual behaviour and attempts to evade criminal penalty.⁷² The ICPC became an advisory organization to

68 *Report of the Special Body of Experts*, part 1 (n. 54) 9.

69 CROWDY (1927) 157.

70 *Report of the Special Body of Experts*, part 1 (n. 54) 12.

71 *Report of the Special Body of Experts*, part 1 (n. 54).

72 International Criminal Police Commission, Report on the Present Conditions of Investigations Undertaken with the Purpose of Finding a Practical Definition of the »International Criminal«. Ninth Meeting, Rome, May 15–20. Geneva: United Nations

Library, League of Nations Archives, Box R5665, 1–3.

the League of Nations in 1929, by which time the ACTW had conducted the first transcontinental investigation into one of the leading cross-border crimes and advanced the understanding of transnational criminal law beyond notions of professional or habitual criminality.⁷³

The investigation carried out by the ACTW initiated the conceptual language of ›trafficking‹ as a ›transnational crime‹. The exchange between Bascom Johnson and Charles Tuttle over the identity of 18-R diminished the legal authority of the League of Nations, and previewed a challenge that would become evident during the planning of the second investigation, in Asia, during the 1930s.⁷⁴ Yet Tuttle did more to undermine the League's campaign against traffic in women by portraying the point of the investigation to be the effort to find super-traffickers such as 18-R. Instead, Johnson and the investigators had conceptualised trafficking in women as a ›social network‹ or ›criminal network‹, an understanding of transnational crime that would become increasingly important throughout the 20th century.⁷⁵

The ACTW operated as a legal regime in the realm of transnational criminal law. The rationale for, and methodology of, the ›worldwide‹ investigation was not new or novel but part of a longer

history. The idea for the investigation originated in John D Rockefeller's campaign against the white slave trade initiated before the First World War. Yet the ACTW carried out the first attempt to measure the white slave trade on an international scale and this effort contributed significantly to the use of *trafficking* as a concept for understanding transnational crime. As a transnational law regime, it may have been guided by sociological jurisprudence. Grace Abbott's proposal reflects this approach. The ACTW certainly involved state and non-state entities, including that of a private individual – Rockefeller. The investigation demonstrates the significance of wider social, political and cultural contexts to the formation of transnational criminal law. Ostensibly, the investigation was meant to determine the routes of trafficking in women. Yet in pointing to Buenos Aires and other South American cities as the primary destinations for trafficked women, the investigators pursued what they believed to be true based on their understanding of urban prostitution. It is important to understand the wider extra-legal contexts in which legal regimes operate.



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73 Other concepts circulating within the League of Nations framework relied on theories of ›social defence‹ and ›criminal science‹. These were, for example, discussed by the lawyers of the committee appointed by the Assembly to work towards the unification of criminal law. The Committee for the Unification of Criminal Law, *Gradual Unification of Criminal Law and*

Co-operation of States in the Prevention and Suppression of Crime: Report of the First Committee to the Assembly, 30 May 1933, Geneva 1933. This effort, led by VV. Pella, combined the resources of several international organizations: International Penal Law Association, International Bureau for the Unification of Criminal Law, International Criminal Po-

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74 KNEPPER (2012) 795–800.

75 KLEEMANS (2014).

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